

**Filed 12/13/11 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2011 ND 221

Tilmer Everett,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

No. 20110189

Appeals from the District Court of Burleigh County, South Central Judicial District, the Honorable Bruce A. Romanick, Judge.

AFFIRMED.

Per Curiam.

Tilmer Everett (on brief), self-represented, P.O. Box 5521, Bismarck, ND 58506, petitioner and appellant.

Jeffrey R. Ubben (on brief), Assistant State's Attorney, Courthouse, 514 East Thayer Avenue, Bismarck, ND 58501, for respondent and appellee.

Everett v. State

No. 20110189

Per Curiam.

[¶1] Tilmer Everett appeals from district court orders dismissing his application for post-conviction relief and denying a subpoena request and motion to recuse or remove the district court judge involved in the proceedings. Everett’s conviction for gross sexual imposition was affirmed in State v. Everett, 2008 ND 126, 756 N.W.2d 344. The dismissals of Everett’s subsequent applications for post-conviction relief were also affirmed. Everett v. State, 2010 ND 226, 795 N.W.2d 37; Everett v. State, 2010 ND 4, 789 N.W.2d 282; Everett v. State, 2008 ND 199, 757 N.W.2d 530.

[¶2] On appeal, Everett argues the district court erred in dismissing his application for post-conviction relief. In his application, Everett raises only one argument not asserted in his prior applications, claiming “new evidence” exists about weather conditions and the status of the Ward County Courthouse in 2006 that requires vacation of his conviction in the interest of justice. As to the denial of his subpoena request, Everett contends the district court “distorted the facts made” in his affidavit requesting a subpoena and argues a delay in the processing of his appeal of the matter was prejudicial. Everett finally argues the district court judge should be “recused or removed from my case file . . . due to his prejudice and bias[.]” We affirm under N.D.R.App.P. 35.1(a)(1).

[¶3] Gerald W. VandeWalle, C.J.
Carol Ronning Kapsner
Mary Muehlen Maring
Daniel J. Crothers
Dale V. Sandstrom